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APPLICATION NO. 09/118,353	FILING DATE 07/17/98	KELLER	FIRST NAMED INVENTOR J	MM92-587	ATTORNEY DOCKET NO.
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WELLS ST JOHN ROBERTS GREGORY AND MATKIN  
SUITE 1300  
601 W FIRST AVENUE  
SPOKANE WA 99201-3828

MM92/0508

ESTRADA, M	EXAMINER
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2828	ART UNIT	PAPER NUMBER
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05/08/01

DATE MAILED:

**Please find below and/or attached an Office communication concerning this application or proceeding.**

**Commissioner of Patents and Trademarks**



UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office

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Washington, D.C. 20231

APPLICATION NO./ CONTROL NO. 09/118,359	FILING DATE 07/17/98	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION Keller	ATTORNEY DOCKET NO. MI 22-587
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Michelle Estrada	EXAMINER
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ART UNIT 2823	PAPER
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19

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

In response to applicant's telephone inquiry regarding the last Office action, the following corrective action is taken. The period for reply of 2 MONTHS set in said Office Action is restarted to begin with the mailing date of this letter. A corrected copy of the last Office Action is enclosed.

  
George Fourson  
Primary Examiner  
2823

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

Claims 1, 2, 7, 9, 41, 42 and 51-57 are rejected under 35 U.S.C. 102(e) as being anticipated by Araki et al.

The rejection is maintained as stated in the office action mailed 10/11/00 and as stated below.

With respect to claims 1, 2, 7 and 9, the claims do not require the doped polysilicon layer to be in contact with the gate dielectric. Therefore, it is not necessary to characterize the first and second layers of Araki's structure as a "single portion" for the purpose of rejection of claims 1, 2, 7 and 9.

With respect to claims 41, 42 and 51, the claims do not require that the inner first portion be uniformly doped.

With respect to claims 52-56, the choice of a particular floating gate thickness, inner first portion thickness and dopant concentration would have been a matter of routine optimization. See MPEP 2144.05.

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### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3-6, 8, 10-14, 25-31 and 43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Araki et al. as applied to claims 1, 2, 7, 9, 41, 42 and 51-56 above, and further in view of the stated comments.

The rejection is maintained as stated in the office action mailed 10/11/00.

### ***Double Patenting***

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).


A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.


Applicant is advised that should claims 25-31 be found allowable, claims 44-50 will be objected to under 37 CFR 1.75 as being a substantial duplicate thereof. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michelle Estrada whose telephone number is 703-308-0729. The examiner can normally be reached on Monday through Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wael Fahmy can be reached on 703-308-4918. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-7722 (7724, 3431 and 3432) for regular communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0956.

  
George Fourson  
Primary Examiner  
Art Unit 2823

  
MEstrada  
May 1, 2001